

Internal Revenue Service

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Department of the Treasury

Washington, DC 20224

Third Party Communication: None

Date of Communication: Not Applicable

Person To Contact:

, ID No.

Telephone Number:

Refer Reply To:

CC:EEE:EB:QP3

PLR-106442-21

Date:

December 17, 2021

Legend

Taxpayer:

Plan:

Plan Year:

In Re: Funding Waiver Request

Dear :

This letter constitutes notice that the waiver of the minimum funding standard for the Plan for the Plan Year is approved subject to the conditions listed below. This waiver is for the remaining unpaid minimum required contribution for the Plan Year after application of all prefunding balances; all waiver amortization payments attributable to this waiver and all outstanding waivers must be paid as stated in section 412(c)(1)(C) of the Internal Revenue Code (the Code).

This waiver is conditioned on Taxpayer's satisfaction of all the following conditions, and the failure to satisfy any of these conditions renders this waiver retroactively null and void as of the date the waiver is granted.

1. Collateral acceptable to the Pension Benefit Guaranty Corp (PBGC) is provided to the Plan for the full amount of the minimum funding waiver by the date agreed upon by Taxpayer, but no later than 120 days from the date of the IRS ruling letter granting the waiver;
2. Starting with the quarterly contribution due , Taxpayer will make timely required quarterly contributions to the Plan while a waiver under section 412(c) is in effect with respect to the Plan. For this purpose, the total amount of

each quarterly contribution will be determined in accordance with section 430(j)(3)(D) and, whenever applicable, sections 430(j)(3)(E) and 430(j)(4);

3. Taxpayer will make timely contributions to the Plan in amounts sufficient to meet the minimum funding requirements for the Plan for the plan years ending _____, through _____, by _____, through _____, respectively;
4. Under section 412(c)(7), Taxpayer is restricted from amending the Plan to increase benefits and/or Plan liabilities while any portion of the waived deficiency remains unamortized, with only certain exceptions as defined in section 412(c)(7)(B). Taxpayer will copy PBGC on any correspondence with the IRS regarding notification of or application for such an exception;
5. No contributions made to the Plan for the _____ plan year are added to the prefunding balance of the Plan;
6. Until full amortization of the waived amount, Taxpayer provides proof of payment of all contributions described above to the IRS and PBGC within five business days of each payment thereof, using the following fax numbers or addresses:

IRS – EP Classification
Mr. Chris Huxtable
400 North 8th Street, Room 480
Richmond, VA 23219
Fax: 804-916-8222

Pension Benefit Guaranty Corporation
Corporate Finance & Restructuring
1200 K Street, N.W.
Washington, DC 20005
Fax: 202-299-5308
Email: SACompliance@PBGC.gov

This waiver is granted in accordance with section 412(c) and section 302 of the Employee Retirement Income Security Act of 1974 (ERISA).

Section 412(c)(1) of the Code provides generally that if an employer is unable to satisfy the minimum funding standard for a plan year without temporary substantial business hardship and application of the standard would be adverse to the interests of plan participants in the aggregate, the Secretary may waive the minimum funding standard requirements for the year with respect to all or any portion of the minimum funding standard.

Section 412(c)(2) provides that the factors taken into account in determining a temporary substantial business hardship include whether the employer is operating at an economic loss, whether there is substantial unemployment or underemployment in the trade or business and in the industry concerned, whether the sales and profits of the industry concerned are depressed or declining, and whether it is reasonable to expect that the plan will be continued only if the waiver is granted.

Taxpayer has been suffering from a temporary substantial business hardship due to the effects of the COVID-19 pandemic, which has significantly affected its liquidity and profitability. Taxpayer has implemented a series of actions to facilitate its long-term improvement, and its financial projections illustrate that its cash flows will improve adequately to satisfy the Plan's funding obligation in the near future.

Based on the facts as represented by Taxpayer, the legal standard for a "temporary substantial business hardship" pursuant to section 412(c) has been met.

Section 412(c)(7) and section 302(c)(7) of ERISA describe the consequences that result in the event the Plan is amended to increase benefits, change the accrual of benefits, or change the rate of vesting, while any portion of the waived funding deficiency remains unamortized. Any amendment to a profit-sharing plan or any other retirement plan (covering employees covered by Plan) maintained by Taxpayer, to increase (or any action by Taxpayer or its authorized agents or designees, such as a Board of Directors or Board of Trustees, that has the effect of increasing) the liabilities of the plan is considered an amendment for purposes of section 412(c) of the Code and section 302(c)(7) of ERISA. Similarly, the establishment of a new profit-sharing plan or any other retirement plan by Taxpayer (covering employees covered by the Plan) is considered an amendment for purposes of section 412(c)(7) of the Code and section 302(c)(7) of ERISA.

The ruling contained in this letter is based upon information and representations submitted by Taxpayer and accompanied by a penalties of perjury statement executed by an appropriate party, as specified in Rev. Proc. 2021-1, § 7.01(16). This office has not verified any of the material submitted in support of the request for ruling, and such material is subject to verification on examination. The Associate office will revoke or modify a letter ruling and apply the revocation retroactively if there has been a misstatement or omission of controlling facts; the facts at the time of the transaction are materially different from the controlling facts on which the ruling was based; or, in the case of a transaction involving a continuing action or series of actions, the controlling facts change during the course of the transaction. See Rev. Proc. 2021-1, § 11.05. Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter.

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representative.

Sincerely,

Janet Laufer
Senior Technician Reviewer,
Qualified Plans Branch 3
Office of the Associate Chief Counsel
(Employee Benefits, Exempt Organizations, and
Employment Taxes)

cc: